

LFC Requester:**Connor Jorgensen****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:***Original** X **Amendment** **Correction** **Substitute** **Date** 2/4/2015 **Bill No:** HB 321 **Sponsor:** Nora Espinoza, Cathrynn Brown **Agency Code:** 305 **Short** Change Certain Voter ID **Person Writing** Dylan K. Lange, AAG **Title:** Requirements **Phone:** 827-7479 **Email** dlange@gmail.com **SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

HB 312 amends several sections of the New Mexico Statutes Annotated regarding voting.

Section 1 of HB 312 amends current NMSA 1978, 1-1-24. The section requires a picture ID to be produced when a voter intends to vote. This is a significant change from the current law, which allows several avenues for voters to identify themselves without providing a photo ID. HB 312 also proposes to require absentee voters to provide their full social security number when submitting their ballots.

Section 2 of HB 312 removes duties from the County Clerk currently prescribed in NMSA 1978, 1-4-11, when she receives a voter certificate. This amendment removes duties of the Clerk regarding non-in-person received certificates of registration.

Section 3 of HB 312 1-6-4 removes the current law in Subsection B regarding voter identification requirements for absentee voters in favor for the more stringent requirements under the new law proposed in HB 312 found in Section 1.

Section 4 of HB 312 removes duties from the County Clerk currently prescribed in NMSA 1978, 1-6-5. It also removes duties of the Secretary of State for establishing voting procedures, in Subsection (K).

Section 5 of HB 312 amends and removes duties of the County Clerk when keeping an absentee ballot register. The clerk no longer must enter the identification requirements of newly proposed amended NMSA 1978, Section 1-6-5.

Section 6 of HB 312 amends and removes information the Secretary of State provides on absentee ballot envelopes and requires the Secretary to provide the identification information prescribed in proposed HB 312 Section 1 (or NMSA 1-1-24).

Section 7 of HB 312 amends and adds ways a duly appointed challenger may challenge the validity of a ballot of an absentee voter by not providing the identification information prescribed in proposed HB 312 Section 1.

Section 8 of HB 312 amends and adds the duties of the County Clerk to reject alternative ballots

if the proper voter identification, as prescribed in proposed HB 312 Section 1, is not produced.

Section 9 of HB 312 amends and removes the ability to have a judge or an election clerk provide a provisional paper ballot to the voter who does not have ID even though the roster indicates that the voter is required to produce a form of ID.

Section 10 of HB 312 removes when a judge will issue a provisional ballot and limits the circumstances to any time identification is not presented. Subsection B, which currently addresses the conditions required for issuance of a provisional ballot, is completely eliminated.

Section 11 of HB 312 imposes notice requirements of voter ID information to the Secretary of State. It also requires the SOS to educate the citizens of the new requirements.

Section 13 of HB 312 adds the ability for a member of the presiding board to challenge a voter who did not provide the required voter identification.

Section 14 of HB 312 allows for an appeal process for rejected provisional ballots voters in district court.

Section 15 of HB 312 requires a provisional ballot voter to provide his or her full social security number.

Section 17 of HB 312 allows for the administrative costs of issuing identification cards to voters to be paid for out of the Public Education Fund.

Section 18 of HB 312 adds the definition of “required voter identification” to NMSA 1978, Section 3-8-2.

Section 19 of HB 312 requires the voter to state his or her name and address and provide voter ID when voting in elections.

Section 22 of HB 312 allows for an election judge to reject an absentee ballot for failing to provide the proposed identification requirements in HB 312.

Section 24 is all new material that provides payment for the administrative work performed by MVD when providing the SOS with all ID cards issued.

Section 25 assesses a fee for applicants for an identification card.

SECTION 26 amends 66-8-111.1 regarding the revocation and right to a hearing for a revocation of a driver’s license in a DWI related proceeding because of failure to submit to a chemical test requested by a law enforcement officer. This has nothing to do with election law and may have been inserted in this bill by mistake.

Section 27 repeals NMSA 1978, 1-12-4.1. This was enacted in 2005. The statute currently reads:

If on election day the amount of time voters must spend in line before being able to vote in the precinct exceeds forty-five minutes, the presiding judge of the precinct shall suspend all physical forms of voter identification requirements other than those

mandated by federal law; provided, however, that at the request of two or more precinct board members of different political parties, a voter shall still present the required physical form of identification, and in the case of a voter who does not provide the required name, birth year and unique identifier, the voter shall still be required to present the required physical form of identification.

Section 28 makes the effective date for this bill July 15, 2016..

FISCAL IMPLICATIONS

Administrative cost for issuing IDs to the Secretary of State.

SIGNIFICANT ISSUES

If HB 312 is successful and challenged in court, it would likely be subject to review based on the most exacting standard of judicial review, specified as strict scrutiny.

The proposed Section 1 in HB 312 eliminates current Subsection A(2) and Subsection B of NMSA 1978, 1-1-24.

Subsection A(2) and B read:

Valid Identification:

...

(2) an original or copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person, the address of which is not required to match the voter's certificate of registration; or

B. a verbal or written statement by the voter of the voter's name, registration address and year of birth; provided, however, that the statement of the voter's name need not contain the voter's middle initial or suffix.

Subsection 1 strips these methods of identification in favor of photo identification only. This potentially raises constitutional issues as noted in the discussion below.

In Subsection A(1)(B), there is not sufficient clarity of the rights of a voter regarding if there is a challenge to the validity of the photo on the identification. This standard appears to be subjective and may therefore be subject to abuse. Subsection A(1)(B) states that an ID must, "contain a photograph of the voter, which resembles the person offering to vote and is presumed to resemble the person unless a challenge is successfully interposed".

Section 3 of the proposed bill places more stringent restrictions on the identification needed for absentee voters. Those restrictions can be found in Section 1 of HB 312. All that is currently required to be produced at the time of voting is the voter's name, registration address and DOB.

The new identification requirements are stricter, including the requirement of identifying a Social Security number. Additionally, these identification requirements are not spelled out in Section 3.

It also seems that there is a charge to attain a valid voter Identification card. This raises potential constitutional issues as well to the extent it infringes upon a citizen's fundamental constitutional right to vote.

Potential Constitutional conflicts and concerns:

- If a state requires voters to buy a photo identification card from the state department of motor vehicles or other agency in order to vote, then this could be construed to essentially constitute a poll tax, which is specifically prohibited by the 24th Amendment.
- If a state were to charge a fee for a photo ID card when such a card was required for voting, the guarantee of legal equality under the 14th amendment could be jeopardized. *See, Harper v. Virginia Board of Elections*, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966). "To introduce wealth or a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor." One way around this may be for NM not to charge for voter identification cards.
- The U.S. Supreme Court decided *Crawford v. Marion County Election Board* upholding a voter ID requirement against an Equal Protection challenge. The *Crawford* test for Constitutional challenges to voting regulations balances the restriction imposed against the justification for that restriction. *Crawford* held that burdens of the sort arising out of the everyday vagaries of life were not serious enough to create unconstitutionality. If this bill passes it will likely be subject to the same type of review but whether this bill would pass constitutional muster remains to be seen.
- Voting Rights Act of 1965. Photo ID requirements fall more heavily upon minority, elderly, or poor voters because these voters are much more likely to lack an ID card issued by the state motor vehicle department. This raises another potential unconstitutional argument against the bill.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

SECTION 26 amends NMSA 1978, Section 66-8-11 regarding the revocation and right to a hearing in a DWI related proceeding after a chemical test has been requested by a law enforcement officer but refused to be taken. It is unclear why this is included in the proposed changes to the voting law specified in HB 312.

The 10th circuit upheld Albuquerque's approved amendment requiring voters in municipal elections to present photo identification at polling locations. *See, The Am. Civil Liberties Union of New Mexico v. Santillanes*, 546 F.3d 1313 (10th Cir. 2008) (Voting restrictions that are generally applicable, even-handed, politically neutral, and which protect the reliability and integrity of the election process are generally not considered severe restrictions and are upheld).

The Court of Appeals upheld the City of Albuquerque's Voter ID law as constitutional, holding that: 1) the differentiation between absentee and non-absentee voters did not violate the constitutional right to equal protection of the law; 2) the law did not impose a substantial burden on a person's right to vote; 3) the prevention of voter fraud and voting impersonation were sufficient justifications for the law; and 4) the law was not unconstitutionally vague.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS